

## **REMARKS/ARGUMENTS**

Claims 1 - 158 are pending in the present application. Claims 1, 21, 26, 33, 39, 40, 43, 44, 45, 55, 65, 70, 77, 83, 84, 87, 88, 89, 100, 110, 120, 125, 132, 138, 139, 142, 143, 144, 147, 148, 149, 150 and 151 are each presented in independent form. Claims 51 and 156 have been amended, claim 158 has been added and no claims were canceled. Reconsideration of the claims is respectfully requested.

### **I. Rejection under 35 USC 103 Obviousness**

The examiner states claims "1-55[sic] are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner (US 4,903, 201) in view of Denning et al., "Baltic Freight Futures: Random Walk or Seasonally Predictable?[sic] International Review of Economics and Finance 3(4)[sic] 399-428." This rejection is respectfully traversed.

With regard to claims 1-155 the examiner states:

Wagner discloses as in claims 1, 11, 21, 26, 33, 40, 43, 44, 45, 55, 65, 70, 77, 83, 84, 88, 89, 100, 110, 120, 125, 139, 143, 144, 147, 148, 148, 149, 150, 151, 152, 155 a computerized exchange system receiving a bid order for a contract, wherein the bid order originates from the bidder;

Matching the bid order for the service with an ask order for a corresponding service contract, wherein an asker owns the corresponding service contract, wherein an asker owns the corresponding service contract and ask order originates from the asker; and transferring ownership of the corresponding service contract to the bidder (see Wagner, col. 5, ll.5-30).

Wagner discloses a trading exchange system for transactions of futures commodity contracts but fails to disclose the exchange system for service contracts. Denning discloses that the Baltic International Freight Futures Market ("BIFFEX") is a futures market where the underlying asset is a service (see Denning et al. Introduction Page 399 and Conclusions on page 423). Since Denning suggests similarities between BIFFEX and the New York Stock Exchange (see Denning page 401, paragraph 2), it would have been obvious for an artisan of ordinary skill in the art to substitute the service contracts of BIFFEX for the commodity contract of Wagner because an artisan at the time of the invention would have recognized the benefits of an automated service contract futures exchange to

conveniently provide efficient remote matching between large volumes of bidders and askers. Thus such a modification would have been an obvious expedient well within the ordinary skill in the art. See pages 2 and 3.

Claims 156 and 157 are apparently allowable or have not been considered.

**A. Wagner does not expressly teach or suggest transferring ownership of a service futures contract:**

Initially, and as discussed in previous responses, the present invention is related to an exchange mechanism for trading service futures rather than commodity futures. One inherent distinction between services and commodities is the absolute and instant perishability of services; there is no residual value of a service after the execution date. When the execution date passes, the service's value drops to nothing, immediately. The value of commodities does not. If the exchange mechanism fails, lags or is unresponsive, the entire value of the service is lost, whereas a commodity retains some value. Therefore, the ownership of a service, even the executory ownership of a service futures contract, should be meticulously tracked.

Wagner does not expressly disclose "transferring ownership of the corresponding service futures contract to the bidder," as recited in claim 1, and others. Instead Wagner discloses "a computerized open outcry exchange system for transacting sales of a particular futures commodity contract by members of a futures trading exchange wherein bids to purchase or offers to sell the particular commodity contract are made by the members through remote terminals and the exchange computer automatically matches offers and bids to complete the transaction." See abstract. Wagner does disclose adjusting the positions of traders based on a bid and ask match, but for the case of a service futures, tracking the line of executory ownership of the contract is as important to the account maintenance. Thus, due to the peculiar nature of the services, the ownership of a futures contract for service must be tightly coupled to the exchange.

Denning, as will be discussed below, is directed to trading indices futures, and therefore is not suggestive of transferring ownership of a service futures contract.

Therefore, it is respectfully asserted that each of independent claims **1, 21, 26, 33, 39, 40, 43, 44, 45, 55, 65, 70, 77, 83, 84, 87, 88, 89, 100, 110, 120, 125, 132, 138, 139, 142, 143, 144, 147, 148, 149, 150 and 151** are allowable over Wagner and Denning neither reference teaches or suggests transferring ownership of a service futures contract, as expressly recited in the identified claims.

**B. Denning does not teach or suggest a services futures exchange as recited in the claims:**

The Examiner turns to Denning for support of a service contract futures exchange. Specifically, the Examiner refers to pages 399 and 423 for support. It is respectfully asserted that rather than teaching a service futures exchange, Denning actually teaches no more than a prior art commodities exchange for trading indexes, which is well known. An index is merely a fungible metric by which to measure something that cannot be successfully traded on an exchange. Indices are not services, but merely metrics used to measure certain properties associated with the respective service, that can then be traded like any other commodity, *i.e.*, as an index. An index is a thing which is completely divorced from the service it purportedly represents. In contrast to a service futures contract of the present invention, the owner of a futures index contract will have no executor right to the underlying service. Furthermore, in contrast to the service futures contract of the present invention, the owner of a futures index contract cannot demand service performance in return for the index contract because a service provider does not owe a duty to any trader who owns a futures index contract.

Therefore, it is respectfully asserted that each of independent claims **1, 21, 26, 33, 39, 40, 43, 44, 45, 55, 65, 70, 77, 83, 84, 87, 88, 89, 100, 110, 120, 125, 132, 138, 139, 142, 143, 144, 147, 148, 149, 150 and 151** are allowable over Wagner and

Denning neither reference teaches or suggests services futures exchange, as expressly recited in the identified claims.

**C. Denning does not teach or suggest a service futures contract as recited in the base claims:**

Denning does not teach or suggest a service futures contract as recited in at least the base claims, but instead teaches trading an index futures contract, *i.e.*, the Baltic Freight Index (BFI). If an index to a service is correctly selected, market traders can successfully hedge or speculate on the future value of the underlying service. If not, the value of the index will have no nexus to the value of the underlying service (which is one primary purpose of the Denning paper). The BFI is based on a complicated schema of routes, tonnage, commodities and usage and in not on an underlying service, nor does it create is right to the delivery of a service. According to Denning:

The BFI is comprised of 13 routes and seven different commodities (varying in cargo size from 10,000 to 130,000 dry weight ton (dwt)). Each individual route contributes from 2.5 to 20 percent of the index value. On a daily basis, a group of eight experts (a panel of ship brokers), chosen by the Baltic Exchange, submit price quotes for each route." , which is based on a complicated schema of If the index is correctly selected, market traders can successfully hedge or speculate on the future value of the underlying service, if not the value of the index will have no nexus to the value of the underlying service (which is one primary purpose of the Denning paper).

Denning describes a method for improving the existing commodities futures trading of indices, practiced on the BIFFEX (see, for example, section: II Institutional description, page 400) and does not teach or suggest trading futures contracts to the underlying services as is recited in the claims.

Therefore, it is respectfully asserted that each of independent claims **1, 21, 26, 33, 39, 40, 43, 44, 45, 55, 65, 70, 77, 83, 84, 87, 88, 89, 100, 110, 120, 125, 132, 138,**

139, 142, 143, 144, 147, 148, 149, 150 and 151 are allowable over Wagner and Denning because neither teach or suggest obligating a bidder, or asker, to sell, or deliver, a service futures contract in a service contract futures exchange as recited in the above-identified claims.

**D. Denning does not teach or suggest transferring ownership of the underlying service or title to the underlying service, or title to a service futures contract:**

Denning discloses the BIFFEX exchange for trading indices relating to a service. Title ownership of the underlying service is never in jeopardy, nor is physical delivery of the service even possible. Denning specifically states:

A futures contract for a service (wherein no physical delivery is possible) requires cash settlement, and cash settlement requires that an index of dry bulk market freight rates serve as the basis for determining this cash settlement. The lack of fungibility of this service was an impediment to the creation of marketable freight futures. See pages 400 and 401.

Thus, it is respectfully asserted that at least claims 9, 10, 13, 15, 19, 20, 37, 42, 53, 54, 57, 59, 63, 64, 81, 86, 93 – 97, 108, 109, 112, 114, 118, 119, 136 and 141 are allowable because each recites a title to a service contract, a service contract title or a title management system (TMS) for recording ownership of the service futures contract.

**E. Denning teaches away from the present invention by expressly teaching that index contracts, and not service contracts, are the only mechanism for hedging or speculating on the future price for a service:**

It is respectfully asserted that not only does Denning not teach or suggest the presently claimed invention, but Denning teaches away from the present invention in commentary and in Denning's previous teaching referred to therein, which proposes

shifting risk associated with service by treating services are indexes for the purpose of futures trading. Denning states, "A futures contract for a service requires cash settlement, and this in turn requires that an index serve as the basis for determining cash settlement." See page 399. Thus, Denning explicitly states that all those of ordinary skill in the art recognize that a services-based contract cannot be used to deliver the actual service, so an index must be used as a swap mechanism.

Denning continues, "A futures contract for a service (wherein no physical delivery is possible) requires cash settlement, and cash settlement requires that an index of dry bulk market freight rates serve as the basis for determining this cash settlement." See pages 400-401. Note that Denning reiterates that "no physical delivery is possible". Denning is simply reaffirming the current thinking in the industry prior to the present invention. The present invention, on the other hand, actually delivers the service when the contract matures.

Denning's methodology simply does not teach or suggest the present invention, but instead provides an alternative solution for some of the shortcomings of the prior art solved by the presently claimed invention. Therefore, it is respectfully asserted that each of independent claims 1, 21, 26, 33, 39, 40, 43, 44, 45, 55, 65, 70, 77, 83, 84, 87, 88, 89, 100, 110, 120, 125, 132, 138, 139, 142, 143, 144, 147, 148, 149, 150 and 151 are allowable.

**F. Denning does not teach or suggest royalty escrow for services contract futures:**

The applicant appreciates that traders will not participate in a service futures exchange if they are uncertain about ownership and the prompt delivery of the underlying service, hence the present invention tightly couples ownership and ownership tracking with the clearing process. Additionally, the applicant appreciates that service providers are not accustomed to hedging their services and therefore also may be reluctant to participate. To encourage participation by service provider, the

present claims are directed to royalty escrow service contract futures where the producer of a service retains a royalty interest in the service. Each time the service futures contract trades for the underlying service, royalty is calculated based on the amount of the sale and escrowed for the service provider. Thus, service providers are encouraged to participate in the services futures exchange in a way never before possible with a prior art commodity exchange. Nowhere does Wagner or Denning even hint at such a feature.

Therefore, the rejection of claims **16 - 18, 35, 39, 60, 62, 79, 83, 115, 117, 134, 117, 134, 138, 152 and 154** under 35 U.S.C. § 103 has been overcome.

**G. Denning does not teach or suggest conjunctive service contracts:**

The applicant appreciates the conjunctive nature of certain services and that services might be readily combined into an even more valuable service. This feature is not particularly attractive for commodities, but it is possible. Typically, conjoined services are more appealing to an end user who expects to take delivery of the service than a speculator. Claims **43, 87, 142 and 155** recite a conjunctive service contract where one service is conjunctively joined to another service to produce an entirely different service. This is not merely adding quantities of like services to fill an order amount, but the creation of a different service from two or more subpart services. For example, barge capacity from an origination port to a destination port may not be available. However, barge capacity from the origination port to a third port may be conjunctively joined to barge capacity from the third port to the destination port. Thus, the amount of barge capacity is not altered, but the service itself has been conjunctively altered.

**H. Newly added claim 158:**

In an effort to more specifically point out and particularly claim applicant's invention as apart from that disclosed in the prior art of Denning, applicant now presents claim **158**. The new claim more particularly recites features directed toward a service futures contract exchange for hedging and speculating on the value of an underlying service asset. It is respectfully asserted that the claimed features cannot be implemented in an index futures exchange of any type.

Claim **158** recites:

identifying a service market to be represented in the service contract futures exchange, the service market comprising a plurality of service related assets provided by service providers;

receiving an ask order for a service futures contract in the service contract futures exchange data processing system for future delivery of an underlying service related asset identified in the service contract futures exchange data processing system and specifying a future delivery date for a service provider to delivery the underlying service related asset, the ask order originating from an asker and representing an open futures position obligating the asker to relinquish ownership of a related service futures contract based on an ask price;

receiving a bid order for a service futures contract in the service contract futures exchange data processing system for future delivery of an underlying service related asset identified in the service contract futures exchange data processing system, the bid order originating from a bidder and representing an open futures position in which the bidder is obliged to relinquish funds equivalent to a bid price for ownership of a service related futures contract;

displaying one of the bid price and the ask price for the related service futures contract for the matched orders, wherein the one of the bid



price and the ask price establishes a price for the future delivery of the underlying service asset identified in the service contract futures exchange data processing system; and  
transferring ownership of a service futures contract to the bidder in response to matching the bid order with the ask order in the service contract futures exchange data processing system.

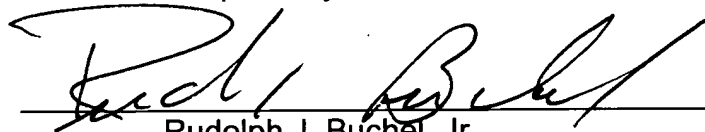
## **II. Conclusion**

It is respectfully urged that the subject application is patentable over Wagner and Denning and is now in condition for allowance.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,

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